rural India, as also for urban India. This is an aspect which I am trying to achieve in the shortest possible time. I have not come to a stage where I can now say that it is launched. It is not yet launched.

THE DEPUTY CHAIRMAN: Thank you, Mr. Minister.

SHRI SANTOSH BAGRODIA: That is why I said that it is only for the future. But what will happen to the women entrepreneurs under this Bill? Will you make any special consideration for them?

SHRI JASWANT SINGH: The Securitisation Bill does not discriminate between the sexes.

THE DEPUTY CHAIRMAN: But I was more concerned about the micro credit for the women. I now put the Bill to vote.

The question is:

"That the Bill be passed."

The motion was adopted.

THE DEPUTY CHAIRMAN: Now, we take up the Negotiable Instruments (Amendment and Miscellaneous Provisions) Bill, 2000. Shri Jaswant Singh.

The Negotiable instruments (Amendment and Miscellaneous Provisions) Interest Bill, 2002

THE MINISTER OF FINANCE AND COMPANY AFFAIRS (SHRI JASWANT SINGH): Madam, I don't wish to take much time of the House. I am very grateful that the House is considering this Bill. As the hon. Members are aware, the Negotiable Instruments Act was first enacted in 1881. It is a vintage legislation. Thereafter, it was amended only after about 100 years, in 1988. It is with a view to providing penalty in the case of dishonour of cheques. But these provisions are found to be deficient. A very large number of cases are pending in different courts of India. In this regard, to overcome these problems, the Negotiable Instruments (Amendment and Miscellaneous Provisions) Bill, 2001 was introduced in the House. It had some provisions about increasing the punishment, etc., to simplify the procedure for service of summons, and to make the offences compoundable and provide for summary trial. The Bill was referred to the Standing Committee, which has submitted its Report in November, 2001.

Keeping in view the recommendations of the Standing Committee, it was considered desirable to include cheque truncation and electronic cheque in the definition of cheque... to exclude Government and institutional nominee-directors from prosecution, to allow serving of summons to the accused in the same manner as to the witnesses as proposed in the original amendment Bill and to provide for application of the Information Technology Act, 2000, to the Negotiable Instruments Act. To accomplish all this, the Negotiable Instruments (Amendment) Bill, 2001, was withdrawn and a comprehensive Negotiable Instruments (Amendment and Miscellaneous Provisions) Bill, 2002, was introduced.

This Bill has already received the assent of the other House. Therefore, I recommend that the Negotiable Instruments (Amendment and Miscellaneous Provisions) Bill, 2002, as passed by the Lok Sabha, be taken into consideration.

The question was proposed.

THE DEPUTY CHAIRMAN: There are seven Members to speak on this Bill. The time allotted to this Bill is one hour. I request the hon. Members that if they can finish it in one hour, it will be good because, at least, we will be finishing two Bills today. Now, Mr. Chavan. Your party has got fifteen minutes. And, it is not necessary that you take all the fifteen minutes.

SHRI PRITHVIRAJ CHAVAN **(Maharashtra):** Thank you Madam. The hon. Minister has explained the logic of bringing this amendment. The logic is laudable. And, I understand that the Bill was passed in the other House without any discussion. I stand to support the spirit of the Bill and the Bill itself. I have a very few points to make and I will not take much time of the House. While tendering evidence, on this Bill, before the Standing Committee, the Cheque Victims Grievance Forum, said that there are over 70,000 cases pending before courts, involving an amount of over Rs. 6,000 crores and it takes about 4-5 years for a case to be cleared. And, almost, three thousand new cases are added every month in Mumbai alone. So, the situation needs to be remedied and the Government have come forward with an amendent. It primarily, seeks to increase the punishment from one year to two years of imprisonment and also tries to speed up the trials. There are some procedural amendments like summary trials, serving of summons and all that. These are all laudable.

Personally, I think, increase in punishment from one year to two years itself may not yield the adequate results. What is more important is to focus on cutting the procedure--how the procedure can speed up. Summary trial has been permitted. One hopes that it will really speed up the matter and still instil fear that there would be a quick punishment going as high as up to two years of imprisonment and fine which can be as high as the amount of cheque itself. The points that I wish to make here are these.

The first one is regarding the definition of the "offence". We have before us 13-14 years of experience since the 1988 amendment was brought before Parliament. The definition for 'offence' was deficient. There were many court cases on the definiton of 'offence'. Madam, in a particular case, an account was closed. According to the Act, the bouncing of cheque can only be for two reasons--when there are insufficient funds in account or when the arrangement of loan with the bank was exceeded. It did not see many other cases. And that is why it led to a lot of litigation. Courts have decided many matters. It would have been better if the definition was tightened up with all contingencies and looking at all sorts of cases that are pending before the courts, these should be brought into the law itself and not wait for the courts to decide. There are cases where checks are deliberately signed with a wrong signature and, therefore, they are returned because signature does not tally with the original signature. Cheques are sent with some alterations made that are not attested. Therefore, the cheques are returned. And there are some cheques which are sent without the signature itself. I, myself, was a victim in one case when an income-tax refund cheque came without the signature of the Income-Tax Officer.

[THE VICE CHAIRMAN (SHRI SANTOSH BAGRODIA)] in the Chair:

This, I believe, is a deliberate practice to harass people. So, all these cases would not come under the definition. A bad signature means, deliberately making such signatures so that the cheque is returned and you do not have to pay; or deliberately not attesting an alteration. These cases are not covered here. While framing the rules, I suggest to the hon. Minister if this kind of situation persists, or this offence is committed more than once, this should be brought under the original definition.

What happens in the cases where the cheques are issued, but accounts are closed later on? Courts have been deciding such cases, but it would be better that the law itself has a clear definition in this regard.

Now, I come to the case of stop-payment advice. A cheque is given, but a stop-payment advice is sent to the bank. What happens in such a case?

There are also some other situations where large companies give cheques to the ancillary industries; but, at the same time, warn them, or, rather threaten them not to present the cheque for a certain period of time because there are no funds. This does not come under the law. This is altogether a different matter. The ancillary industry cannot present the cheque because that needs business from them. Therefore the ancillary industry, whose business depends on the large company, keeps on holding the cheques. So, the payment is made through cheques, books of account show that no payment is due, but the cheques are not presented because of certain relationships. Of course, such cases cannot be considered in this Bill, but there was just a scope for clarifying the definition of offence in view of the various cases pending in courts.

Now, Madam Deputy Chairman, I come to the case of default, a particular type of serious default—default arising out of trade relationships where some goods are bought and not paid for, or if paid for, the cheque has bounced. I am particularly referring to the cheques issued by the non-banking financial companies, the NBFCs, the plantation companies, that take deposits. With the globalisation, in the early 90's, many of these plantation companies, non-banking financial companies, were floated. These companies took deposits, but when deposits were returned all the cheques bounced. These were cases of wilful defrauding of common people who had given money in the hopes of large returns. This class of people, who had given cheques and which had bounced, needs to be given even stiffer punishment. I shall be grateful, if this is considered.

There are two particular points that the Standing Committee had recommended. The Government, apparently, did not find convenient to include them in the Bill. First, when the cheques are not honoured because of insufficient funds, the Standing Committee had recommended that these cheques should be honoured to the extent the funds are available. Supposing there is a cheque of Rs. 10 lakhs, and the availability of funds

is only Rs. 9 lakhs, and the cheque bounces. The Standing Committee had recommended that may be a cheque could be honoured to the extent of available funds, without impinging the rights of the person to proceed for a criminal or a civil case for the remaining amount, so that, at least, the amount that is available, might be realised for business and the hardship might be reduced. But, apparently, the Government did not feel it fit to include it. I think, this should have been considered. It was a good suggestion.

Section 138 dealt with the speedy trials. I do not want to comment much on it.

I come to amendments to section 141, where the Government has proposed to exclude Government-nominated Directors. There are two-three points. In this case too, the Standing Committee had recommended that these provisions are too harsh. All the Directors are not involved in day-to-day business. Therefore, the Standing Committee had sought that a distinction be made between Executive Directors, who are actively involved in day-to-day running of business, and other non-Executive Directors who are not really involved in running of the business. This distinction should have been made. It could be made, and still it can be considered. This was the recommendation of the Standing Committee. While the Bill seeks to excludes Directors nominated by the Government, what about the Government employees? I just now mentioned about the cases of the Income Tax Department, where they routinely send cheques, without mentioning the dates properly. They do this deliberately, to harass the public. In many cases, the assessee has to go back again to get the date corrected. Sometimes, it is found that cheques are sent, without the signature of the Income-tax Officer. It happened in my own case. I had to again go back to the Department to get the signature. It was a deliberate error. In the Act, nothing is mentioned about it. So, what happens in these kinds of situations? In my State of Maharashtra, it so happened that a Statutory Corporation issued cheques to cotton farmers. The cheques were given by the Cooperative Bank, because it is an apex body of the Government of India. The Cooperative Bank was given instruction not to make payment of the cheques, and the cheques were kept by the banks. They neither bounced, being Government cheques, nor were they paid. So, what happens in such cases? Tomorrow, we are going to discuss the problems of the cotton farmers. I think the hon. Minister knows about this

case. What about the Government employees, Income-tax or Customs officers who issue the cheques? And what happens in such cases when the cheques are not paid? These things happen not because of any insufficiency of funds. Let us hope that such a situation would not arise. But it is actually happens in the States; the States are not able to pay. It is not an unthinkable situation. The State finances are in a dire situation. What happens in those cases when payment of cheques is not made because of insufficiency of funds? What about the Government Officers? You talked about Directors of the Government Companies, but you have not talked about the Government employees. This point needs to be clarified.

The amendments suggested in the Information Technology Act are good. Information Technology, e-cheques and truncated cheques, are all new areas. We should get used to the concept of electronic payments, electronic clearing, electronic cheques and electronic images, being treated as cheques and all that. But it is good that you have brought the whole area of electronic cheques into this legislation, that is, the Negotiable Instruments (Amendment and Miscellaneous Provisions) Bill. With these few comments, I wholeheartedly support the initiative of the Government to make cheque payment more credible, to create more confidence in the mode of payment by cheques; overall, to speed up the economy. Thank you, Sir.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Smt. Vanga Geetha; you have got three minutes.

SHRIMATI VANGA GEETHA (Andhra Pradesh): Sir, I welcome the Negotiable Instruments (Amendment and Miscellaneous Provisions) Bill, 2002. Sir, the punishment prescribed under this Act has been increased from one year to two years, and the period of issue of notices has been increased from 15 days to 30 days. These are welcome steps. Every offence punishable under this Act has been made compoundable, and provision of summary trial of cases has also been made in this Act. At this juncture, I would like to make one suggestion. Sir, reasonable opportunity should be given to the parties concerned. This request is reasonable, justifiable, and *bona fide*. The party should not be punished. Sir, I would like to mention here about a report published from Mumbai. According to this report, nearly 70,000 cases, worth Rs. 6000 crores, are

pending. I would like to know from the hon. Minister, how he is going to speed up the disposal of these cases. With these words, I support the Bill. Thank you, Sir.

SHRIMATI S.G. INDIRA (Tamil Nadu): Sir, thank you very much for giving me this opportunity to speak. I wholeheartedly support this Bill. But I want the hon. Minister to clarify certain points. Sir, in Section 144 (1) it is mentioned, '...such accused or witness ordinarily resides...'. At the time of summons itself, how can we decide that the person is accused? So, I want a clarification on this point. Sir, the word 'accused' should be replaced with 'respondent'. It is a summary trial, and only at the end of the trial we come to know that a person is really accused or not. My second clarification is, sub-section (2) of section 144 of the Principal Act says, "Where an acknowledgment purporting to be signed by the accused or the witness or an endorsement purported to be made by any person authorised by the postal department or the courier services that the accused or the witness refused to take delivery of summons has been received, the court issuing the summons may declare that the summon has been duly served." How can we come to know that a respondent has really refused to receive the summon issued by the court? It may be that the applicant might have given wrong address at the time of filling the case. Therefore, he should be given one more chance. A provision should be incorporated in the Bill that if the summon is not received by the accused or the witness, it should be published in the daily newspapers. If, even then, he does not respond to it, then, it should be deemed that he was refused to receive the summon.

Another point is, it is not mentioned in the Bill that his personal property can be attached. If it can be, then, he will, definitely, come to the court. He cannot escape from the legal action. Therefore, I suggest that this provision may be incorporated in the Bill.

Then, so many cases are pending in the court. It is mentioned here that these cases may be furnished in a summary trial. I welcome this provision. It will be in the larger interests of the public. With these words, I, again, welcome the Bill.

SHRI S. VIDUTHALAI VIRUMBI (Tamil Nadu): Mr. Vice-Chairman, Sir, the Negotiable Instruments (Amendments and Provisions) Bill, 2002, which has been brought before us for consideration, is, more or less, a

non-controversial Bill. It is just to strengthen the provisions already made in the principal Act. I would like to make only two points. Generally, people issue cheques to other persons hoping that their cheques will not be dishonoured. Suppose, 'A' issues a cheque to 'B'. And, based on that cheque, B endorses the cheque to C. After some time, 'B' gets the information from 'A' that the cheque issued by him may be postponed for a week or forthnight, etc. Sometimes, to enhance the liquidity, people get the cheque discounted and receive the money. Since, the person called 'C' might not received this information, and he deposits the cheque in the bank, but that cheque is dishonoured. 'B' & 'C' think that they have been cheated. So, without any reason, 'A' is deemed to be a cheater. Actually, there is no intention to cheat or to deceive, but, at the same time, if it bounces at the bank, that means, the name of the person or of the company gets tarnished. For that purpose, there should be a provision in the Bill. Suppose a person who has issued a cheque, requests the person to whom he has issued the cheque, to present the cheque at the bank, say, after a week or a fortnight that request should be honoured by the person who has taken the cheque. Here, the mistake is totally different from the error which has happened inadvertantly. Therefore, these two should not be treated equally.

Secondly, the Company Directors are usually divided into two categories. One is the idle Directors, who do not participate in the day-to-day affairs of the company. The others are those Directors who are executives of a company. They know what is happening in the company. My point is, the idle Directors should not be punished. They must be protected, because they do not know what is happening in the company. They should not be asked to prove in the court that they were not aware of what was happening in the company and that they did not have any intention to cheat. Therefore, you should make a distinction between the persons who actually takes part in the administration of the company and the persons who are mere Directors of the company. These Directors should not be punished.

With these words, I support the Bill.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Shri H.K. Javare Gowda. Not here.

SHRI N.K. PREMCHANDRAN (Kerala): Mr. Vice-Chairman, Sir, thank you for giving me this opportunity to participate in the discussion on the

Negotiable Instruments (Amendment and Miscellaneous Provisions) Bill, 2002.

First of all, I would like to support this Bill, subject to certain clarifications. I fully support the views expressed by Shri Prithviraj Chavan, regarding the definition in Section 138. As per this section, the complaint will be taken as a cognisable offence, on the basis of two grounds. One is when there is insufficient fund or when the amount which is stated in the cheque exceeds the actual amount in the account. Only on these two grounds, if a cheque is dishonoured, section 138 will be attracted. But, in the day-to-day commercial transactions, so many instances are there like 'stop payment' instructions, so subsequent to the issuance of the cheque, and the account itself being withdrawn from the Bank. So, there is a cause of action for dishonouring the cheque. But, on these grounds section 138 is not attracted. That is why a suggeston has been made before this House that when a cheque is dishonoured, there is cheating in the transaction, and, this, therefore, should also come within the ambit of section 138. I would like to seek a clarification on this point from the hon. Finance Minister. I feel that these two grounds should also get incorporated so that they come under the ambit of the section.

Secondly, I would like to seek a clarification in regard to section 6, which is sought to be amended. Section 6 is regarding the definition of a cheque. As per Section 6(A), that is proposed to be amended, it includes the electronic image of a truncated cheque and a cheque in the electronic form. So, the definition or the scope of the cheque gets enhanced. The first is with regard to the electronic image of the cheque and a cheque in the electronic form. Both are explained—what is a cheque in the electronic form and a truncated cheque. The clarification which I am seeking is about the meaning of the electronic image of a truncated cheque. But my doubt, or the clarification, which I am seeking from the hon. Finance Minister is, what is the meaning of the electronic image of a truncated cheque? Is a photostat copy of the cheque sufficient for presentation before the bank? If that be the case, fraudulent transaction will take place. It is very clear in the Explanation. What is Explanation-I? There, a cheque in the electronic form is explained in part (a). In part (b), a 'truncated cheque', is also explained. What about the electronic image of a truncated cheque? is that sufficient for presentation? I would like to compare Section 6 with Section 131, which is to be amended. It shall be the duty of the banker, who receives the payment based on an electronic image of a truncated cheque to look into the *prima facie* genuineness of the cheque.

So, the responsibility is also upon the banker to see whether the electronic from of the truncated cheque, which is presented before the bank, is genuine or not. So, how will that cheque will be cashed, or how will it will honoured by the bank? So, my doubt, on which I would like to seek clarification is regarding, how the *prima facie* genuineness of an electronic form or a photostat copy of a cheque can be authenticated by the banker, how it can be taken into confidence. That is the point, on which I would like clarification.

The next point is regarding Section 138. Under Section 138 punishment has been enhanced from one year to two years of imprisonment. I would also like to mention that by a mere enhancement of the punishment will not speed up the court proceedings. The proceedings have to be summarised for which steps have to be taken.

Regarding Section 141, it is also mentioned that Directors who are responsible for the day-to-day activities should be responsible for this. Otherwise, no company can be brought within the purview of the Negotiable Instruments Act, especially Section 138. Regarding Section 145, I have strong objections. Section 145, clause (1) says, *"notwithstanding anyting contained in the Code of Criminal Procedure, 1973, the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code."* So, mere affidavit it sufficient to substantiate the case. The affidavit need not be authenticated by oral evidence. That is Section 145. That is, a new system is coming. Chief examination is not required. A mere affidavit in person before the Court is sufficient to accept in evidence. That Section, I object to , because the authenticity of the affidavit has to be sworn to by the party, or by the complainant before the Court of law. Otherwise, there is no meaning of it. I would like you to re-consider that provision. Regarding period, which is to be given for placing the complaint. (*Time bell*) One minute, Sir. Another point that I would like to mention is regarding the information to the party, who has given the cheque. That is, the cause of action arises only when the party, or the respondent who issued the cheque, or the drawer of the cheque, gets the information that the cheque, which he has given is dishonoured. In most of the cases, it is very dificult because, if he is staying outside, or if he is out of station, it is very difficult to pass on the information and the case cannot be filed and the Section 138 benefit will not be given to the parties. So, I think, it is a welcome provision in Section 142 and also in Section 144 that if he is not residing there, his agent or his substitute at sevice is sufficient, so that cause of action can take place, so the party will get

benefits under Section 138 also " With these points for clarification, I would like to support this Bill.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Hon. Finance Minister to reply.

SHRI JASWANT SINGH: Mr. Vice-Chairman, Sir, I am very grateful to hon. Members for their comments, observations and suggestions. There are useful suggestions. I will endeavour to respond to the clarifications sought. On the query about summons and accused, summons are issued only after the Court has come to a *prima facie* conclusion on the basis of pre-summoning evidence that an offence has been committed. That is why the word 'accused' is used. A query was raised about the number of cases pending in Delhi and Bombay. In Tis Hazari, the number of cases pending is 15,262; in Patiala House, the number of cases pending is 13,550 and in Karkardooma, the number of cases pending is 3,350. The total number of cases pending in Delhi is 62,162. Bombay beasts Delhi by 2000 in pending cases. Sir, I am sure, you do not want me to read out the names of all the courts where they are pending. So, I will skip that. But, some 64,000 odd cases are pending. The hon. Member, Shri Prithviraj Chavan, while speaking, has said that countrywise, lakhs and lakhs of cases are pending. I would like to inform him that this enactment would provide instant relief to all those people. I won't go into the major provision of the Bill, how this will contribute to reducing the number of cases. I am sure, you know about it. I do wish to take about one or two minutes so far as the Negotiable Instruments Act is concerned. Section 138 of the Act deals with bouncing of cheques due to insufficient balance. But, if a cheque bounces for any other resons,such as false signatures or forgery, such offences are dealt with under the Indian Penal Code. It is a different provision. A question was put about the Standing Committee's recommendation. Now, the Standing Committee had recommended that we should honour the cheque to the extent that there are funds. This is a complicated matter. The Reserve Bank is still examining it, and that is why this recommendation is still under consideration. We may not accept it. About section 141, one of the proposals was to draw distinction between Executive and Non-Executive Directors. This also could not be fully dealt with because, otherwise, in many cases, the guilty might escape the provisions of law, and the officers of the bank will be the ony ones then left carrying the responsibility of possible offences. Therefore, at the present moment, we leave it at that.

As far as the electronic image of cheque truncation is concerned, in this system of cheque truncation, the movement of cheque is halted at

some stage during the clearing cycle, and it is not returned for final payment to the bank on which it is drawn. Therefore, what is achieved is that the physical movement of the cheque is halted at a point where the truncation is effected, and elecronically, the image is transmitted and the cheque is passed on for further processing and payment. This does away with the practice of physical movement of a paper cheque from payee bank to the clearing house, and then to the drawee. This will cut drastically the time taken in encashing the cheques, specially what are called, outstation cheques. I am sure, the hon. Members might have experienced such a difficulty in the clearance of their cheques in Delhi. For example, in my home town of Jodhpur, quite often, I experience that it takes upto 10-12 days for the cheques to clear. With this enactment, this time will be considerably shortened. I think, I have cleared all the queries raised. With these words, I recommend that the Bill be passed.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Now, the question is:

"That the Bill to further amend the Negotiable Instruments Act, 1881, the Bankers' Books Evidence Act, 1891 and the Information Technology Act, 2000, as passed by Lok Sabha, be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Now, we shall take up clause-by-clause consideration of the Bill.

Clauses 2 to 13 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI JASWANT SINGH: Sir, I beg to move:

"That the Bill be passed."

The question was put and the motion was adopted.

SHRI PRANAB MUKHERJEE (West Bengal): Before you ask the Leader of the House and the Government that the next Bill slated is the North-Eastern Council Bill. But, immediately after that, there is a most innocuous Bill that deals with the amendment of certain provisions of the Officers of Parliament and the Leader of the Opposition Act, 1977. This is

a very innocuous amendment and this Bill can be passed without any discussion and after that you can take up the North-Eastern Council Bill. And, if the Minister of Parliamentary Affairs is ready to move this Bill, and if the Leader of the House agrees, I think we can pass this Bill without much discussion and then we can move over to any other ...*(Interruption)*... Bill listed in today's business.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Yes, this is acceptable. But, I think, Shri Pramod Mahajan is not sitting here. So, on behalf of Shri Pramod Mahajan, Shri O. Rajagopal, can move this Bill.

THE SALARIES AND ALLOWANCES OF OFFICERS OF PARLIAMENT AND LEADERS OF OPPOSITION IN PARLIAMENT (SECOND AMENDMENT) BILL, 2002

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND THE MINISTER OF STATE IN THE MINISTRY OF URBAN DEVELOPMENT AND POVERTY ALLEVIATION (SHRI O. RAJAGOPAL): Sir, I beg to move:

> "That the Bill further to amend the Salaries and Allowances of Officers of Parliament Act, 1953 and the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977, as passed by Lok Sabha, be taken into consideration."

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Now, we shall take up clause-by-clause consideration of the Bill.

Clauses 2 and 3 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI O. RAJAGOPAL: Sir, I beg to move:

"That the Bill be passed."

The question was put and the motion was adopted.